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SENATE BILL 505

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Roman Maes III

AN ACT

RELATING TO WATER; PROVIDING FOR MUNICIPAL AUTHORITY TO LIMIT  
NEW WATER WELL DRILLING WITHIN THE MUNICIPALITY BY ORDINANCE;  
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Municipal Code is  
enacted to read:

" NEW MATERIAL NEW DOMESTIC WATER WELLS-- MUNICIPAL  
AUTHORITY. --

A. A municipality may by ordinance restrict the  
drilling of wells within the exterior boundaries of that  
municipality.

B. A qualified municipality that fails to  
authorize the drilling of a new well shall provide domestic  
water service to the property owner under the municipal water

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1 provider's usual and customary charges and rate schedules.

2 C. A qualified municipality shall file with the  
3 state engineer its municipal ordinance restricting the  
4 drilling of wells.

5 D. An applicant for a domestic well permit to  
6 drill a well located within the exterior boundaries of a  
7 qualified municipality shall seek and obtain authorization to  
8 drill the well from the appropriate municipal official prior  
9 to submittal of the application to the state engineer.

10 E. If an applicant for a domestic well permit is  
11 authorized by a qualified municipality to drill a new well,  
12 the applicant shall submit the notice of authorization from  
13 the qualified municipality with the domestic well permit  
14 application to the state engineer.

15 F. Upon denial of authorization to drill a new  
16 well, a qualified municipality shall submit notice of the  
17 denial and the domestic well permit application to the state  
18 engineer.

19 G. The state engineer may approve or deny, in  
20 whole or in part, the application for a domestic well permit  
21 based on the authorization from the qualified municipality and  
22 may impose as he deems necessary conditions of approval.

23 H. Nothing in this section shall limit the  
24 authority of the state engineer to administer water rights as  
25 otherwise provided by law.

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1 I. The state engineer shall not be liable for  
2 actions taken in accordance with the municipal ordinance  
3 authorizing restriction of the drilling of wells within the  
4 exterior boundaries of a qualified municipality.

5 J. As used in this section:

6 (1) "qualified municipality" means a  
7 municipality that has adopted an ordinance restricting the  
8 drilling of new wells within its exterior boundaries; and

9 (2) "well" means a domestic water well."

10 Section 2. Section 72-12-1 NMSA 1978 (being Laws 1931,  
11 Chapter 131, Section 1, as amended) is amended to read:

12 "72-12-1. UNDERGROUND WATERS DECLARED TO BE PUBLIC--  
13 APPLICATIONS FOR USE TO STATE ENGINEER--HEARINGS.--The water  
14 of underground streams, channels, artesian basins, reservoirs  
15 or lakes, having reasonably ascertainable boundaries, are  
16 declared to be public waters and to belong to the public and  
17 to be subject to appropriation for beneficial use. By reason  
18 of the varying amounts and time such water is used and the  
19 relatively small amounts of water consumed in the watering of  
20 livestock; in irrigation of not to exceed one acre of  
21 noncommercial trees, lawn or garden; in household or other  
22 domestic use, except as provided in Section 72-12-1.1 NMSA  
23 1978; and in prospecting, mining or construction of public  
24 works, highways and roads or drilling operations designed to  
25 discover or develop the natural resources of the state,

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1 application for any such use shall be governed by the  
2 following provisions:

3 A. ~~[any]~~ a person, firm or corporation desiring to  
4 use ~~[any]~~ public waters described in this section for watering  
5 livestock; for irrigation of not to exceed one acre of  
6 noncommercial trees, lawn or garden; or for household or other  
7 domestic use shall make application to the state engineer on a  
8 form to be prescribed by him. Upon the filing of each  
9 application describing the use applied for, the state engineer  
10 shall issue a permit to the applicant to so use the waters  
11 applied for; provided that as part of an application for  
12 livestock watering use on state or federal land, the applicant  
13 shall submit proof that he:

14 (1) is legally entitled to place his  
15 livestock on the state or federal land where the water is to  
16 be used; and

17 (2) has been granted access to the drilling  
18 site and has permission to occupy the portion of the state or  
19 federal land ~~[as]~~ that is necessary to drill and operate the  
20 well; and

21 B. whenever ~~[any]~~ a person, firm or corporation  
22 or the state desires to use not to exceed three acre-feet of  
23 public water described in this section for a definite period  
24 of not to exceed one year in prospecting, mining or  
25 construction of public works, highways and roads or drilling

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1 operations designed to discover or develop the natural  
2 mineral resources of the state, only the application  
3 referred to in Section 72-12-3 NMSA 1978 shall be required.  
4 Separate application shall be made for each proposed use,  
5 whether in the same or in different basins. Upon the filing  
6 of [~~such applications~~] an application, the state engineer  
7 shall make an examination of the facts and, if he finds that  
8 the proposed use will not permanently impair any existing  
9 rights of others, he shall grant the application. If he  
10 finds that the proposed use sought will permanently impair  
11 such rights, then there shall be advertisement and hearing  
12 as provided in the case of applications made under Section  
13 72-12-3 NMSA 1978. "

14 Section 3. A new Section 72-12-1.1 NMSA 1978 is  
15 enacted to read:

16 "72-12-1.1. [NEW MATERIAL] DOMESTIC WELLS--MUNICIPAL  
17 AUTHORITY TO RESTRICT DRILLING.--

18 A. A municipality may by ordinance restrict the  
19 drilling of wells within the exterior boundaries of that  
20 municipality.

21 B. A qualified municipality that fails to  
22 authorize the drilling of a new well shall provide domestic  
23 water service to the property owner under the municipal  
24 water provider's usual and customary charges and rate  
25 schedules.

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1 C. A qualified municipality shall file with the  
2 state engineer its municipal ordinance restricting the  
3 drilling of wells.

4 D. An applicant for a domestic well permit to  
5 drill a well located within the exterior boundaries of a  
6 qualified municipality shall seek and obtain authorization  
7 to drill the well from the appropriate municipal official  
8 prior to submittal of the application to the state engineer.

9 E. If an applicant for a domestic well permit is  
10 authorized by a qualified municipality to drill a new well,  
11 the applicant shall submit the notice of authorization from  
12 the qualified municipality with the domestic well permit  
13 application to the state engineer.

14 F. Upon denial of authorization to drill a new  
15 well, a qualified municipality shall submit notice of the  
16 denial and the domestic well permit application to the state  
17 engineer.

18 G. The state engineer may approve or deny, in  
19 whole or in part, the application for a domestic well permit  
20 based on the authorization from the qualified municipality  
21 and may impose as he deems necessary conditions of approval.

22 H. Nothing in this section shall limit the  
23 authority of the state engineer to administer water rights  
24 as otherwise provided by law.

25 I. The state engineer shall not be liable for

1 actions taken in accordance with the municipal ordinance  
2 authorizing restriction of the drilling of wells within the  
3 exterior boundaries of a qualified municipality.

4 J. As used in this section:

5 (1) "qualified municipality" means a  
6 municipality that has adopted an ordinance restricting the  
7 drilling of new wells within its exterior boundaries; and

8 (2) "well" means a domestic water well."

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1 FORTY- FOURTH LEGISLATURE

2 FIRST SESSION, 1999

SB 505/a

3  
4  
5 February 16, 1999

6  
7 Mr. President:

8  
9 Your CONSERVATION COMMITTEE, to whom has been  
10 referred

11  
12 SENATE BILL 505

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

16  
17 1. On page 1, line 21, after "wells" insert "if the  
18 property line of the applicant is within three hundred feet of  
19 the municipal water distribution lines located".

20  
21 2. On page 1, between lines 22 and 23, insert the  
22 following:

23  
24 "B. The municipal ordinance shall contain a  
25 provision for waiver when the cost of extending the municipal

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION, 1999

SCONC/SB 505

Page 9

water distribution lines to the residence exceeds the cost of  
drilling a domestic well."

3. Reletter succeeding subsections accordingly.

4. On page 1, line 24, after "provide" insert "within  
ninety days".

5. On page 2, between lines 9 and 10, insert the  
following:

"F. A qualified municipality shall act upon the  
request for authorization to drill a new well by authorizing  
or denying the request within thirty days."

6. Reletter succeeding subsections accordingly.

7. On page 5, line 19, after "within" insert "three  
hundred feet of the municipal water distribution lines located  
within".

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION, 1999

SCONC/SB 505

Page 10

8. On page 6, between lines 8 and 9, insert the following:

"E. A qualified municipality shall act upon the request for authorization to drill a new well by authorizing or denying the request within thirty days."

9. Reletter succeeding subsections accordingly., and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

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Arthur H. Rodarte, Vice-

Chairman

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FIRST SESSION, 1999

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SCONC/SB 505

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Adopted \_\_\_\_\_ Not

Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: None

Excused: Eisenstadt, Leavell, Sanchez

Absent: None

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1 FORTY- FOURTH LEGISLATURE

2 FIRST SESSION, 1999

SB 505/a

3  
4  
5 March 5, 1999

6  
7 Mr. President:

8  
9 Your JUDICIARY COMMITTEE, to whom has been referred

10  
11 SENATE BILL 505, as amended

12  
13 has had it under consideration and reports same with  
14 recommendation that it DO PASS, amended as follows:

15  
16 1. On page 2, line 22, after the period insert

17 "Following the

18 denial by the state engineer, the applicant may appeal the  
19 decision to the district court in the county of the  
20 municipality.

21  
22 Respectfully submitted,

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Michael S. Sanchez, Chai rman

Adopted \_\_\_\_\_ Not

Adopted \_\_\_\_\_

(Chi ef Clerk)

(Chi ef Clerk)

Date \_\_\_\_\_

The roll call vote was 4 For 2 Against

Yes: 4

No: Davi s, Sanchez

Excused: Aragon, McSorley

Absent: None

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION, 1999

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